

Classification: UNCLASSIFIED

Please find below the Department's informal view on HR 3159, the Foreign Aid Transparency and Accountability Act of 2012. This was compiled with inputs from Policy, DSCA and Comptroller. Please let us know if you have any additional questions.

The Department of Defense opposes the Foreign Aid Transparency and Accountability Act of 2012 because the legislation would cover all DoD executed programs including Building Partnership Capacity (BPC), Humanitarian Assistance and Disaster Relief, as well as those executed on behalf of State like Foreign Military Sales (FMS) and International Military Education and Training (IMET). DOD has two primary concerns.

First, the extensive public reporting requirements raise concerns. Much of the information relating to FMS and BPC programs would likely be of interest to many other countries. Country A could go to the planned website and potentially learn what Country B has received in military assistance and how it has made use of that assistance. While there are provisions in section 3 to keep required reports from being posted to the planned public website, the reports would still be created and so subject to FOIA requests. Some of this information might be protected from release under 10 USC 130c, but particularly with respect to BPC assistance, where the foreign country is not the purchaser, the protection afforded by 10 USC 130c to foreign government information may not apply.

Second, the development of guidelines as proposed in section 2(c) would be extremely difficult for FMS and BPC 'foreign assistance.' The guidelines call for evaluating projects and program impacts, and because FMS and BPC assistance involve national defense activities, many, if not most, countries would likely be resistant to USG personnel monitoring, beyond any end use monitoring already required, and evaluating the military assistance they receive, which would likely require significant access to foreign military installations and to foreign military personnel. A large scale increase in monitoring and evaluating of FMS sales would presumably have to be paid for by FMS customers, either as a direct charge to the case or, more likely, a change to the FMS administrative surcharge rate. The above two points together would likely serve to make US defense articles and services less attractive to foreign countries.

Given the importance of our BPC, FMS and IMET programs, the national security risks, risk of reducing FMS, and impact such a substantial diversion of resources would have on our programs, the DOD strongly opposes this bill.